

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMBURG-SUD NORTH AMERICA, INC.
and HAMBURG SUDAMERIKANISHE
DAMPFSCHIFFAHRTS GESELLSCHAFT
KA.,

Plaintiffs,

-against-

AMERICAN INDEPENDENT LINE, INC. and
BRASIL CARGO SERVICES LOGISTICA,
LTD. and BOMIX INDUSTRIA DE
EMBALAGENS LTDA.,

Defendants.

Index No: 10-cv-4559 (KAM)

**VERIFIED ANSWER TO
AMENDED VERIFIED
COMPLAINT AND
VERIFIED CROSS-CLAIM
FOR DECLARATORY
JUDGMENT TO DETERMINE
ENFORCEABILITY OF
CONTRACT TERMS
AND CONDITIONS**

Defendant/Respondent/Petitioner, American Independent Line, Inc. ("AIL" or "Defendant"), by and through its attorneys, Holland & Knight LLP, as for its Verified Answer to the Amended Verified Complaint of Plaintiff Hamburg-Sud North America, Inc. and Hamburg Sudamerikanische Dampfschiffahrts Gesellschaft KA (together "Plaintiffs"), respectfully states upon information and belief:

1. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Amended Verified Complaint.

2. Admits that Hamburg-Sud North America Inc. issued bill of lading no. SUDU280017845018 dated December 7, 2008. Denies that the goods shipped were the goods of AIL. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Amended Verified Complaint.

3. Admits that AIL is within the personal jurisdiction of this Court. Except as so admitted, denies the remaining allegations in paragraph 3 of the Amended Verified Complaint.

4. Admits that the address of Brasil Cargo Services is Praca Barao Do Rio Branco, NR 14-7 Andar Sala 74, Centro - Santos/SP - Brasil - CEP: 11010-040. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 4 of the Amended Verified Complaint.

5. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 5 of the Amended Verified Complaint.

6. Admits that Plaintiffs' claims are admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court pursuant to 28 U.S.C. § 1333(1).

7. Admits that AIL issued bill of lading no. AILW8644992 in Great Neck, New York. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 7 of the Amended Verified Complaint that do not pertain to AIL.

8. Paragraph 8 contains a legal conclusion as to which no answer is required.

9. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 9 is required.

10. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 10 is required.

11. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 11 is required.

12. Paragraph 12 contains a legal conclusion as to which no answer is required.

12. Paragraph 12 contains a legal conclusion as to which no answer is required.

13. The terms of the U.S. Carriage of Goods by Sea Act, 46 U.S.C. § 30701 (notes) ("COGSA") speak for themselves. The remaining allegation of paragraph 13 contains a legal conclusion as to which no answer is required.

14. The terms of COGSA speak for themselves, thus no answer to paragraph 14 is required.

15. The terms of COGSA speak for themselves, thus no answer to paragraph 15 is required.

16. The terms of COGSA speak for themselves, thus no answer to paragraph 16 is required.

17. The terms of COGSA speak for themselves, thus no answer to paragraph 17 is required.

18. Denies the allegations in paragraph 18 of the Amended Verified Complaint as they pertain to AIL. Admits that Bomix disputes and objects to the applicability and enforceability of 46 U.S.C. § 30701, Notes §§ 4(5) and 3(6). Except as so denied and admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 18 of the Amended Verified Complaint that do not pertain to AIL.

19. Denies the allegations in paragraph 19 of the Amended Verified Complaint as they pertain to AIL. Admits that Bomix disputes and denies that U.S. COGSA governs the carrier's rights, duties, responsibilities, defenses and limitations during the period of the carrier's responsibility for the goods shipped under the contract, and/or that the carrier shall not in any event be liable for any loss or damage to or in connection with transporting the shipper's goods in

excess of \$500 per package or customary freight unit. Except as so denied and admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 19 of the Amended Verified Complaint that do not pertain to AIL.

20. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 20 of the Amended Verified Complaint.

21. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 21 is required.

22. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 22 is required.

23. Admit that the goods stowed in container SUDU970013-3 (one 40' flatrack container) were damaged while the *Libra Corcovado* was calling at the port of Norfolk, Virginia. Except as so admitted, denies the remaining allegations set forth in paragraph 23 of the Amended Verified Complaint.

24. Admits that the goods stowed in container SUDU970013-3 (one 40' flatrack container) were damaged in Norfolk, Virginia and not transported to Salvador, Brazil but instead returned to the factory and that the goods stowed in container IPXU399852-5 were transported to Salvador, Brazil. Except as so admitted, denies the remaining allegations set forth in paragraph 24 of the Amended Verified Complaint.

25. Paragraph 25 (erroneously numbered as paragraph 26) contains a legal conclusion as to which no answer is required.

26. Paragraph 26 (erroneously numbered as paragraph 27) contains a legal conclusion as to which no answer is required.

27. Paragraph 27 (erroneously numbered as paragraph 28) contains a legal conclusion as to which no answer is required.

28. Denies the allegations set forth in paragraph 28 (erroneously numbered as paragraph 29) of the Amended Verified Complaint as they pertain to AIL. The allegations set forth in paragraph 28 contain legal conclusions as to which no answer is required.

29. Denies that Plaintiffs are entitled to the relief sought against AIL as set forth in the *ad damnum* clause.

FIRST AFFIRMATIVE DEFENSE

30. AIL alleges, by way of an affirmative defense, that said shipments described in Plaintiffs' Amended Verified Complaint were subject to all the terms, conditions and exceptions contained in AIL bill of lading no. AILW8644992. Any shortage, loss or damage to the shipment was due to causes for which AIL was not liable or responsible by virtue of the provisions of the Carriage of Goods by Sea Act ("COGSA"), *reprinted in* notes following 46 U.S.C. § 30701 (formerly 46 U.S.C. § 1301 *et seq.*), and/or the Harter Act, 46 U.S.C. §§ 30702-30707 (formerly 46 U.S.C. App. § 190 *et seq.*) and/or the applicable AIL tariffs and/or provisions of the AIL bill of lading and/or the general maritime law of the United States.

SECOND AFFIRMATIVE DEFENSE

31. AIL alleges, by way of an affirmative defense, that any damage sustained or to be asserted by cargo interests was a result of the negligence or recklessness of other parties over which AIL had no control and/or for which AIL cannot be held liable.

THIRD AFFIRMATIVE DEFENSE

32. AIL alleges, by way of an affirmative defense, that it is entitled to indemnification from Hamburg-Sud North America Inc. for any and all damages for which it may ultimately be

found liable to cargo interests, which liability AIL denies, including reasonable attorneys' fees incurred in defending against any action brought by cargo interests against AIL.

CROSS-CLAIM FOR DECLARATORY JUDGMENT

Defendant/Respondent/Petitioner, by and through its attorneys Holland & Knight LLP, while denying that is it in any way obligated or liable for claims asserted by Plaintiffs, alleges by way of Cross-Claim/Petition for Declaratory Judgment against Defendant Bomix Industria de Embalagens Ltda ("Bomix") as follows:

33. AIL repeats and reallages each and every admission, denial, and denial for lack of knowledge or information sufficient to form a belief, as set forth in paragraphs 1 through 32 of its Verified Answer to the Amended Verified Complaint above with the same force and effect as if set forth at length herein.

34. The nature of this Cross-Claim/Petition is an action for declaratory judgment against co-defendant Bomix under 28 U.S.C. § 2201 of the Judicial Code for the purpose of determining a question in actual controversy between the parties, namely the validity of certain Terms and Conditions of a written contract for services provided by AIL to Bomix in connection with the ocean transportation of Bomix's goods from the United States to Brazil.

35. As is set forth in more detail below, AIL's Cross-claim/Petition against Bomix arises out of the same transaction or occurrence that is the subject matter of Plaintiffs' original action.

36. The written contract upon which this Cross-claim/Petition is based is AIL bill of lading no. AILW8644992, dated December 7, 2008, a contract of carriage which provided for the transportation of certain goods belonging to Bomix from the port of Baltimore, Maryland for discharge at the port of Salvador, Brazil. A true and correct copy of AIL bill of lading no.

AILW8644992, dated December 7, 2008 is attached hereto as Exhibit 1. A true and correct copy of the Terms and Conditions for AIL's bills of lading is attached hereto as Exhibit 2.

37. AIL bill of lading no. AILW8644992, dated December 7, 2008, provided among other terms the following:

1. (Definitions) When used in this Bill of Lading (A) "Ocean Carrier" means American Independent Line, Inc., which performs the sea carriage of the Goods, and the vessel, her owner, and demise charterer, whether any of the preceding parties is acting as carrier or bailee.

* * * * *

(E) "Merchant" includes the shipper, consignor, consignee, owner, and receiver of the Goods and the holder of this Bill of Lading.

(F) "Goods" means the cargo described on the face of this Bill of Lading and, if the cargo is packed into container(s) supplied or furnished by or on behalf of the Merchant, include the container(s) as well.

* * * * *

2. (Clause Paramount) . . . (B) If this Bill of Lading covers Goods moving to or from ports of the United States in foreign trade, then carriage of such goods shall be subject to the provisions of the United States Carriage of Goods by Sea Act, 1936, 46 U.S.C. P1300-1315 as amended (hereinafter "U.S. COGSA"), the terms of which shall be incorporated herein. The provisions of U.S. COGSA shall (except as otherwise specifically provided in this Bill of Lading) govern throughout the time when the Goods are in the custody of the Ocean Carrier and any other water carrier and as otherwise provided in this Bill of Lading.

38. Pursuant to Clause 2 of AIL bill of lading no. AILW8644992, COGSA (46 U.S.C. § 30701 (notes)) governs the rights, duties, responsibilities, limitations and defenses of the parties herein.

39. In addition, COGSA applies to and governs the rights, duties, responsibilities, limitations and defenses of the parties to the shipment of goods in question by its own force and effect.

40. COGSA 46 U.S.C. § 30702 entitled "Application" provides the following:

(a) In general. - Except as otherwise provided, this chapter applies to a carrier engaged in the carriage of goods to or from any port in the United States.

COGSA, therefore, applies to "all contracts for carriage of goods by sea to or from ports of the United States in foreign trade." 46 U.S.C. § 30701 (notes § 13).

41. 46 U.S.C. § 30701, notes § 1(a) and 1(e) entitled "Definitions" provide:

(a) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

* * * * *

(e) The term "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

42. 46 U.S.C. § 30701, notes § 2 (formerly 46 U.S.C. § 1302) entitled "Duties and rights of carrier" provides:

Subject to the provisions of section 1306 of this title [section 6 of this note], under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in sections 1303 and 1304 of this title [sections 3 and 4 of this note].

43. COGSA 46 U.S.C. § 30701, notes § 3(6) (formerly 46 U.S.C. § 1303(6)) entitled "Responsibilities and liabilities of carrier and ship" provides, in relevant part:

In any event the carrier and the ship shall be discharged from all liability in respect of loss and damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

44. COGSA 46 U.S.C. § 30701, notes § 4(5) (formerly 46 U.S.C. § 1304(5)) entitled "Rights and immunities of carrier and ship" provides, in relevant part:

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount

exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

45. Upon information and belief, defendant Bomix disputes the applicability and enforceability of COGSA, in particular 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), as they would be applied to AIL's bill of lading no. AILW8644992, dated December 7, 2008.

46. Geodis Wilson USA, Inc. ("Wilson USA") engaged AIL, a non-vessel operating common carrier ("NVOCC")¹ to arrange transport of two packages from Baltimore, Maryland to Salvador, Brazil: one 40' flatrack container (container no. SUDU 970-13-3) containing a plastic injection molding machine and one 20' standard container (container no. IPXU 399 852-5) containing a plastic injection molding machine. AIL issued bill of lading no. AILW8644992, dated December 7, 2008 for carriage of the two packages with Wilson USA as the shipper and GW Gerenciamento de Frete-Brazil as the consignee. Brasil Cargo Services Logistica Ltd was indicated as the notify party.

47. AIL in turn contracted with plaintiff Hamburg-Sud North America, Inc. ("HSNA"), a ship operator and owner to provide ocean carriage of the two packages aboard the vessel *Libra Corcovado*. HSNA issued its own bill of lading no. SUDU280017845018, dated December 7, 2008 for the two packages with AIL as the shipper and AIL's agent in Brazil, Brasil Cargo Services, as the consignee.

48. The *Libra Corcovado* sailed from Baltimore, Maryland with the two packages onboard on December 7, 2008.

¹ A NVOCC "means a common carrier that-- (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." 46 U.S.C. § 40102.

49. On December 11, 2008, AIL received notice from HSNA regarding an accident occurring in Norfolk, Virginia involving the 40' flatrack container (container no. SUDU 970013-3) containing one of the plastic injection molding machines.

50. On April 12, 2010, an action was filed in Salvador, Brazil by Bomix against Milacron Equipamentos Plasticos Ltd, GW Gerenciamento de Fretes- Brasil, and Hamburg Sud Brasil Ltda for damages resulting from the incident in Norfolk, Virginia involving SUDU970013-3 (one 40' flatrack container) and the plastic injection molding machine contained therein ("Brazilian Action").

51. As a common carrier for the cargo for which Bomix is claiming damages and that was shipped pursuant to AIL bill of lading no. AILW8644992, dated December 7, 2008, AIL is a potential defendant in the Brazilian Action.

52. In the Brazilian Action, Bomix has sought the application of Brazilian (civil) law regarding strict liability. Specifically, Bomix is claiming for material damages in the amount of US\$523,149.61 for material damages as well as loss of earnings at R\$35,400.36² per day, and R\$500,000 for "moral" damages. Bomix has not recognized the \$500 package limitation contained in COGSA 46 U.S.C. § 30701, notes § 4(5) (formerly 46 U.S.C. § 1304(5)) or the one-year statute of limitations contained in COGSA 46 U.S.C. § 30701, notes § 3(6) (formerly 46 U.S.C. § 1303(6)).

53. Thus, Bomix, the ultimate consignee and owner of the goods shipped under AIL's contract of carriage disputes and denies that COGSA would govern AIL's rights, duties, responsibilities, defenses and limitations during the period of the carrier's responsibility for the goods shipped under the contract of carriage, and/or that the carrier shall not in any event be liable for any loss or damage to or in connection with transporting the shipper's goods in excess

² According to the August 1, 2011 online Wall Street Journal, 1 Brazil real = US\$0.6451.

of \$500 per package or customary freight unit. Bomix further disputes and denies that the carrier shall be discharged from all liability in respect to loss or damage unless the suit is brought within one year of the delivery of the goods or the date when the goods should have been delivered.

54. Where there is a controversy as to the meaning and effect of a written contract, a party to the contract may seek interpretation by means of a declaratory judgment of a court having jurisdiction over the parties.

55. A proceeding in the nature of a declaratory judgment is a form of remedial procedure which is particularly appropriate where the basic issue underlying the claim of the plaintiff is the interpretation or construction of a contract.

56. The basic issue is whether AIL is entitled to limit its liability for any damage or loss to \$500 per package or customary freight unit of the goods shipped.

57. Bomix's position that Brazilian civil law applies to its claim for cargo damage to the exclusion of COGSA, including 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), presents a matter of actual controversy by and between the parties and raises a question of the validity of the entire contract of carriage, thereby entitling AIL to the relief sought.

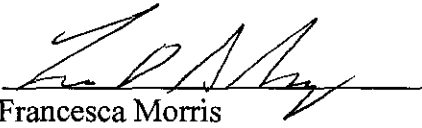
PRAYER FOR RELIEF

WHEREFORE, Defendant/Respondent/Petitioner AIL demands a declaratory judgment pursuant to 28 U.S.C. § 2201, finding that AIL's contract of carriage is wholly valid and enforceable and that COGSA, in particular 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), are valid and enforceable against defendant Bomix and that Defendant/Respondent/Petitioner AIL is entitled to a judgment declaring that any and all liability which may be found for the loss or damage to the goods may be, and hereby is, limited to the \$500 per package limitation provided

by COGSA § 30701, notes § 4(5) for each box or package of the goods which was shipped under AIL's contract of carriage, AIL bill of lading no. AILW8644992, dated December 7, 2008.

Dated: New York, New York
August 3, 2011

HOLLAND & KNIGHT LLP

By: 
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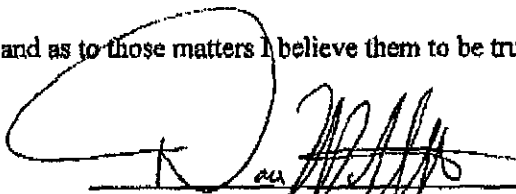
Attorneys for Defendant,
American Independent Line, Inc.

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

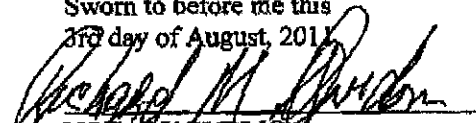
DAVID MOFFITT, being duly sworn, deposes and says:

That I am the Treasurer for defendant American Independent Line, Inc., that I have read the foregoing Verified Answer and Verified Cross-claim/Petition for Declaratory Judgment and know the contents thereof; that I know it to be true except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



DAVID MOFFITT

Sworn to before me this
3rd day of August, 2011



NOTARY PUBLIC

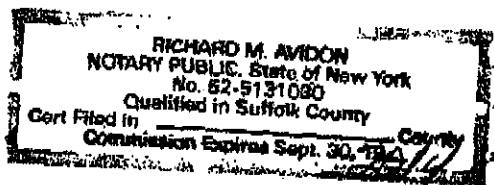


EXHIBIT 1



BILL OF LADING

FOR COMBINED TRANSPORT
AND PORT-TO-PORT SHIPMENT
FMC 14062 N

SHIPPER EXPORTER (COMPLETE NAME AND ADDRESS) GEODIS WILSON USA, INC. 7513 CONELLEY DR. HANOVER, MD 21076		BOOKING NO. A18644992	BILL OF LADING NO. AILW8644992
INSIGNEE (COMPLETE NAME AND ADDRESS) GW GERENCIAMENTO DE FRETES-BRAZIL CNPJ:52.147.923/0001-74 RUA CANTAGALO 1391-VILLA GOMEZ SAO PAULO SP 03319-001 BRAZIL		EXPORT REFERENCES BAL23000011	
NOTIFY PARTY (COMPLETE NAME AND ADDRESS)		FORWARDING AGENT F M C NO. FMC#224 CHB #3426 GEODIS WILSON USA, INC. 7513 CONNELLEY DR. SUITE I HANOVER, MD 21076 USA	
		POINT AND COUNTRY OF ORIGIN OF GOODS U.S.A.	
		ALSO NOTIFY - ROUTING & INSTRUCTIONS FOR RELEASE CONTACT: BRASIL CARGO SERVICE LOGISTICA LTDA. PRACA BARAO DO RIO BRANCO, NR 14-7 ANDAR SALA 74 CENTRO - SANTOS/SP - BRASIL - CEP: 11010-040 TEL: 55 13 3219-9400 FAX: 55 13 3219-9771 ATTN: ANTONIO MENDES / APARECIDO COSTA	
PRE-CARRIAGE BY *	PLACE OF RECEIPT BY PRE-CARRIER *		
EXPORTING CARRIER Libra Corcovado V.42S	PORT OF LOADING Baltimore, MD	LOADING PIER / TERMINAL	
PORT OF DISCHARGE Salvador	PLACE OF DELIVERY BY ON CARRIER *	TYPE OF MOVE PORT TO PORT CY	

PARTICULARS FURNISHED BY SHIPPER

MARKS & NOS/CONTAINER NOS	NOS OF PKGS	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
SUDU 970 013-3 TARE WEIGHT 5250 KG	1	40' FLATRACK CONTAINER SLAC 1 BOX MILACRON POWERLINE MODEL NT550-54 PLASTIC INJECTION MOLDING MACHINE	39536 KGS	96.192 CBM
IPXU 399 852-5 SEAL: 2491014 TARE WEIGHT 2200 KG	1	20' STANDARD CONTAINER SLAC 1 BOX MILACRON POWERLINE MODEL NT550-54 PLASTIC INJECTION MOLDING MACHINE NCM#8477.10.11	1064 KGS	5.330 CBM
BOMIX IND. VIA SALVADOR		FREIGHT PREPAID ON BOARD LIBRA CORCOVADO V.42S AT BALTIMORE, MD ON DECEMBER 7, 2008. AES X20081117022835		

THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM
THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION
REGULATIONS. DIVERSION CONTRARY TO U.S. LAW PROHIBITED.

COPY NON-NEGOTIABLE

OCEAN FREIGHT AND CHARGES

FREIGHT PREPAID
40' FR X 1 \$6980.00 USD
20' STD X 1 \$1530.00 USD
TOTAL \$8510.00 USD

DESTINATION THC COLLECT

SHIPPER'S DECLARED VALUE \$
AS PER TARIFF AND CARRIERS LIABILITY LIMITS
(SEE CLAUSE 17 OVERLEAF)

SUBJECT TO EXTRA FREIGHT

Received by the Carrier from the shipper in apparent good order and condition (unless otherwise noted herein) the total numbers or quantity of containers or other packages or units indicated above, for transportation subject to all the terms hereof (including the terms on the reverse hereof) from the place of receipt or the port of loading, whichever applicable, to the port of discharge or the place of delivery, whichever applicable. All subject to the terms appearing on the face and back of this Bill of Lading and the Carriers applicable tariff.

IN WITNESS WHEREOF, THREE (3) ORIGINAL BILLS OF LADING, ALL OF THE SAME TENOR AND DATE, HAVE BEEN SIGNED, ONE OF WHICH BEING ACCOMPLISHED, THE OTHERS TO STAND VOID.

By AMERICAN INDEPENDENT LINE, INC., AS CARRIER

6

DATED AT GREAT NECK, NY ON December 7, 2008

FMC No. 14062N

* APPLICABLE ONLY WHEN DOCUMENT USED AS A COMBINED TRANSPORT BILL OF LADING

EXHIBIT 2

